



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 16, 2023

IN THE MATTER OF:

Appeal Board No. 626495

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive benefits, effective January 3, 2022 through May 22, 2022, on the basis that the claimant did not comply with registration requirements. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed November 4, 2022 (), the Administrative Law Judge modified the initial determination to be effective March 30, 2022 through May 22, 2022, and, as so modified, sustained the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board, insofar as it overruled the initial determination. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. Further testimony and evidence should be taken before a decision is rendered on the question of whether the claimants claim for benefits should be backdated to January 3, 2022.

To that end, the Commission of Labor should be represented at the remand hearing. The Commissioner is directed to produce testimony and evidence with respect to its Call History Report and the Backdating Questionnaire, marked respectively as Exhibits 4 and 5; and also with respect to whether its Web and

phone claims systems, including Verified.Me, were operating properly during the period under review.

The parties should be questioned about how the Backdating Questionnaire, dated June 3, 2022, was completed and how the claimant responded to the questions it asked; the claimant should also be given an opportunity to explain her responses. In the event that the questionnaire was completed with the assistance of a Department of Labor representative, the Commission of Labor is directed to produce the representative at the remand hearing, who shall be questioned about what the claimant was asked and how she responded.

The parties may produce any other relevant witness or document. The Judge shall take any further testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case shall be remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

GERALDINE A. REILLY, MEMBER